

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 14 , 2005

IN RE:

PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS

)
)
) **DOCKET NO.**
) **03-00585**
)

PETITION FOR ARBITRATION OF BELL SOUTH MOBILITY
LLC; BELL SOUTH PERSONAL COMMUNICATIONS, LLC;
CHATTANOOGA MSA LIMITED PARTNERSHIP;
COLLECTIVELY D/B/A CINGULAR WIRELESS

PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC
D/B/A AT&T WIRELESS

PETITION FOR ARBITRATION OF T-MOBILE USA, INC.

PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P.
D/B/A SPRINT PCS

**ORDER DENYING THE REQUEST FOR RECONSIDERATION OF "ORDER GRANTING
MOTION TO COMPEL" ISSUED JUNE 17, 2004 BY THE PRE-ARBITRATION OFFICER**

This matter came before the arbitration panel for deliberation on July 29, 2004, and concerns the arbitration of interconnection agreements between several commercial mobile radio service providers ("CMRS Providers") and the Rural Coalition of Small Local Exchange Carriers and Cooperatives ("Coalition").¹

¹ Five arbitration petitions were filed on November 6, 2003 as follows: Cellco Partnership d/b/a/ Verizon Wireless in Docket No. 03-00585, BellSouth Mobility LLC, BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership, Collectively d/b/a Cingular Wireless in Docket No. 03-00586, AT&T Wireless PCS, LLC d/b/a AT&T Wireless in Docket No. 03-00587, T-Mobile USA, Inc. in Docket No. 03-00588, and Sprint Spectrum L.P. d/b/a Sprint PCS in Docket No. 03-00589. These petitions were consolidated into Docket No. 03-00585 by order of the respective voting panel for each docket. The Coalition members are: Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Concord Telephone Exchange, Inc., Crockett Telephone Company, Inc., DeKalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc., Humphreys County Telephone Company, Loretto Telephone Company, Inc., Millington Telephone Company, North Central Telephone Cooperative, Inc., Peoples Telephone Company, Tellico Telephone Company, Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc., and Yorkville Telephone Cooperative.

I. TRAVEL OF THE CASE

On November 6, 2003, a petition for arbitration was filed with the Tennessee Regulatory Authority (the "Authority" or "TRA") by Cellco Partnership d/b/a Verizon Wireless ("Verizon") pursuant to 47 U.S.C. § 252. The petition asked the TRA to convene an arbitration proceeding to resolve certain issues resulting from Verizon's attempts to negotiate an interconnection agreement with members of the Coalition. Subsequent similar petitions for arbitration with the Coalition filed by other CMRS providers were consolidated with Verizon's petition in this docket.

On March 8, 2004, the CMRS Providers filed a proposed protective order and stated in the cover letter attached to the filing that counsel for the Coalition "concur[s] in the language of the proposed order" with the additional suggestion that the protective order be modified "to include the Consumer Advocate as among those to whom confidential information may be disclosed."²

On March 19, 2004, the CMRS Providers filed the *First Set of Interrogatories of the CMRS Providers Directed to Each of the Members of the Rural Coalition of Small LECs and Cooperatives* ("First Set of Interrogatories"). Interrogatory No. 37 of the *First Set of Interrogatories* stated, "Provide copies of your audited financial statements for 2000, 2001, 2002 and 2003."³

The Coalition provided the *Response of the Rural Coalition of Small LECs and Cooperatives to the First Set of Interrogatories of the CMRS Providers* ("Response") to the CMRS Providers on March 29, 2004.⁴ The Coalition's *Response* contained numerous objections to various discovery requests contained in the *First Set of Interrogatories* including an objection to Interrogatory No. 37 which stated, "The Coalition objects to this request as not seeking documents or information relevant to [sic] the issues before the Tennessee Regulatory Authority in the arbitration."⁵

² Letter from Henry Walker, Counsel for CMRS Providers, Boulton, Cummings, Conners & Berry, PLC to Kim Beals, Pre-Arbitration Officer, Tennessee Regulatory Authority (March 8, 2004)

³ *First Set of Interrogatories*, p. 16 (March 19, 2004)

⁴ The Coalition did not file its *Response* with the Authority. The *Response* was, however, included in Collective Exhibit E attached to the *CMRS Providers' Motion to Compel Responses to Interrogatories* ("Motion to Compel") filed on May 13, 2004. The certificate of service attached to the *Response* indicates that it was served on the other parties to this docket on March 29, 2004.

⁵ *Motion to Compel*, Collective Exhibit E (Response of the Rural Coalition of Small LECs and Cooperatives to the First Set of Interrogatories of the CMRS Providers, p. 17) (May 13, 2004)

On April 12, 2004, the proposed protective order originally filed with the Authority on March 8, 2004 was adopted and entered by the Pre-Arbitration Officer without modification.⁶

On May 13, 2004, the CMRS Providers filed the *CMRS Providers' Motion to Compel Responses to Interrogatories* ("*Motion to Compel*") The *Motion to Compel* sought an order compelling the Coalition to provide responses to numerous discovery requests contained in the *First Set of Interrogatories*, including a response to Interrogatory No. 37 Pursuant to TRA Rule 1220-1-2-.06(2) a response to the *Motion to Compel* was due on May 20, 2004.

On May 25, 2004, Counsel for the Coalition filed a letter indicating that per a May 20, 2004 meeting the parties had tentatively agreed to a resolution of all issues related to the *Motion to Compel*.⁷ On June 8, 2004, Counsel for the CMRS providers filed a letter indicating that resolution of all issues related to the *Motion to Compel* had not been achieved.⁸

On June 11, 2004, the CMRS Providers and the Coalition filed the *CMRS/Rural Coalition Joint Statement Re Interrogatories Subject to the CMRS Providers' May 13, 2004 Motion to Compel* ("*Joint Statement*"). The *Joint Statement* stated that Interrogatory No. 37 had been modified to state, "Please provide copies of each Coalition member's most recent two audited financial statements containing Part 32—Uniform System of Accounts level detail."⁹ The *Joint Statement* provided the Coalition's response to the modified version of Interrogatory No. 37 as stating that the Coalition "will provide a response after conferring with our clients."¹⁰

On June 17, 2004, the Pre-Arbitration Officer issued the *Order Granting Motion to Compel* ("*Order*"). The *Order* addressed numerous outstanding discovery requests including the modified version of Interrogatory No. 37. In the *Order* the Pre-Arbitration Officer noted that the "Coalition stated that it would confer regarding its response to this request but has offered no objection to

⁶ *Order Adopting Proposed Protective Order* (April 12, 2004)

⁷ Letter from William T. Ramsey, Counsel for Coalition, Neal & Harwell, PLC to Kim Beals, Pre-Arbitration Officer, Tennessee Regulatory Authority (May 25, 2004)

⁸ Letter from Melvin J. Malone, Counsel for the CMRS Providers, Miller & Martin, PLLC to Kim Beals, Pre-Arbitration Officer, Tennessee Regulatory Authority (June 8, 2004)

⁹ *Joint Statement*, p. 11 (June 11, 2004)

¹⁰ *Id.* at 12

providing the requested information” and granted the *Motion to Compel* in full with respect to the modified version of Interrogatory No 37.¹¹

On June 23, 2004, the Coalition filed its *Supplemental Responses of Coalition in Response to Order to Compel* (“*Supplemental Responses*”) together with a cover letter which contained a request asking the Pre-Arbitration Officer to “hold in abeyance the requirement for the Coalition members to provide company-specific financial information and copies of previously conducted costs studies.”¹² In the cover letter, the Coalition stated its willingness to provide the requested information on a voluntary basis while maintaining objections to its admissibility and relevance. The Coalition further explained that several Coalition members had thus far been unavailable to counsel and that the Coalition had not anticipated providing the requested information when first considering the protective order ultimately entered in this docket.¹³

On June 28, 2004, the Pre-Arbitration Officer sent a letter to counsel for the Coalition noting the Coalition’s request that the Pre-Arbitration Officer reconsider and hold in abeyance the *Order* and stating that, pursuant to Authority rules, such requests would only be considered in the form of a motion.¹⁴ That same day Coalition members Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc. (“the TEC Companies”) filed the *Request for Reconsideration of “Order Granting Motion to Compel” Issued June 17, 2004 by the Pre-Arbitration Officer* (“*TEC Request*”). On July 1, 2004, the remaining members of the Coalition filed the *Petition of the Rural Independent Coalition Joining in a Request for Reconsideration Filed by the Tech Companies* (“*Coalition Request*”) seeking to join in and adopt the *TEC Request*. In the latter filing, the remaining members of the Coalition asked that the *Order* be stayed pending resolution of the *TEC Request* and the *Coalition Request*. Also on July 1, 2004, the CMRS Providers filed the

¹¹ *Order*, p. 7 (June 17, 2004)

¹² Letter from William T. Ramsey, Counsel for the Coalition, Neal & Harwell, PLC to Kim Beals, Pre-Arbitration Officer, Tennessee Regulatory Authority (June 23, 2004) (the attached cover letter to the *Supplemental Responses*)

¹³ *Id*

¹⁴ Letter from Jean A. Stone, Pre-Arbitration Officer, Tennessee Regulatory Authority to William T. Ramsey, Counsel for the Coalition, Neal & Harwell, PLC (June 28, 2004)

CMRS Providers' Response to the TEC Companies' Request for Reconsideration of Order Granting Motion to Compel ("CMRS Providers' Response").

A status conference was held on July 2, 2004. During the status conference the Pre-Arbitration Officer discussed the procedural posture of the *TEC Request* with the parties. Also during the status conference the TEC Companies and the Coalition moved to have the *TEC Request* treated as a motion for interlocutory review.

On July 9, 2004, the Pre-Arbitration Officer entered the *Order Granting Permission for Interlocutory Review and Granting Request for Stay*. In this order the Pre-Arbitration Officer noted the oral motion of the TEC Companies and the Coalition during the July 2, 2004 Status Conference to treat the *TEC Request* as a motion for interlocutory review and granted the same based on the lack of an objection by the CMRS providers. The Pre-Arbitration Officer's July 9, 2004 order also granted the *Coalition Request* to join in the *TEC Request* and granted a stay of the *Order* based upon the substantial likelihood that the release of confidential information pending reconsideration would cause hardship or injury to the Coalition's members.¹⁵

The arbitration panel heard oral argument from the parties regarding the *TEC Request* following the regularly scheduled Authority Conference held on July 26, 2004. On July 29, 2004, after deliberating the merits of the *TEC Request*, a majority of the arbitration panel voted to deny the *TEC Request* and the Coalition's request to enhance the April 12, 2004 protective order before requiring its members to produce the requested audited financial statements and voted unanimously to require the Coalition to provide the requested audited financial statements pursuant to the terms of the protective order adopted by the Pre-Arbitration Officer on April 12, 2004.

¹⁵ *Order Granting Permission for Interlocutory Review and Granting Request for Stay*, pp. 1-3 (July 9, 2004)

II. ISSUES PRESENTED FOR DECISION

- a. Whether the *TEC Request* should be granted and the *Order* vacated.
- b. Whether the Coalition should provide the requested financial statements pursuant to the terms of the protective order adopted by the Pre-Arbitration Officer on April 12, 2004.

III. POSITIONS OF THE PARTIES

a. THE COALITION

In its June 23, 2004 cover letter referenced above, the Coalition explained that at the time it provided the response, contained in the *Joint Statement*, which indicated that the Coalition would provide an additional response to Interrogatory No. 37

[It was the intent of the Coalition] to work through a voluntary process for the provision of this information. The Coalition was, frankly, surprised procedurally by the issuance of the Order to Compel in the absence of a final opportunity to provide the additional response and to address our position on the matter of relevance, admissibility and use of the requested information.¹⁶

In the *TEC Request* the Coalition stated that the *Order* was entered “without an opportunity for the parties to be heard, and without even allowing for the seven day time period to pass within which parties are permitted to respond to preliminary motion requests.”¹⁷

The Coalition stated that it has consistently maintained an objection to Interrogatory No. 37 through its original objection to Interrogatory No. 37, which stated, “The Coalition objects to this request as not seeking documents relevant to the issues before the Tennessee Regulatory Authority in the arbitration.”¹⁸ The Coalition stated that this objection was “specific and consistent with the framework set forth in Rule 26.02 of the Rules of Civil Procedure which require that permissible discovery is limited to non-privileged information that is ‘relevant to the subject matter involved in the pending action’”¹⁹

¹⁶ Letter from William T. Ramsey, Counsel for the Coalition, Neal & Harwell, PLC to Kim Beals, Pre-Arbitration Officer, Tennessee Regulatory Authority (June 23, 2004) (the attached cover letter to the *Supplemental Responses*)

¹⁷ *TEC Request*, p. 2 (June 28, 2004)

¹⁸ *Id.*

¹⁹ *Id.*

The Coalition asserted that even if the FCC's pricing standards apply to Coalition members, the requested audited financial statements would not be relevant to this arbitration.²⁰ The Coalition stated that the applicable pricing standard is based on "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and that the requested audited financial statements "do not provide any of this cost data."²¹

The Coalition expressed concern that the requested audited financial statements "reveal many private aspects of a company that is not publicly traded. For example, the cash and debt positions of the companies are sensitive and potentially valuable information to a competitor."²²

The Coalition stated that the requested financial statements are not relevant because consideration of the information contained in those statements is prohibited by Section 252(d)(2)(B)(ii) of the Telecommunications Act of 1996 and may not be used in traditional rate case proceedings using rate of return regulation.

During oral argument at the July 26 Hearing, Counsel for the Coalition stated an alternative position suggesting that if the panel found that the requested audited financial statements should be produced, that the protective order should be modified such that the financial statements would be made available only to attorneys and expert witnesses. Counsel for the Coalition suggested that this modification to the protective order was reasonable given that non-expert witnesses would have no use for the information.²³

The Coalition summarized its position with the statement that.

The arbitration of interconnection rates established under Sec. 251(b)(5) of the Communications Act does not empower either the FCC or any state regulatory authority "to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls." The Congress has

²⁰ *Id.* at 4

²¹ *Id.*

²² *Id.*

²³ Transcript of Proceedings, pp. 5, 8-9, 23, 27-28 (July 26, 2004)

been specific. The audited financials requested by the CMRS Providers and required by the Order do not provide information regarding the costs of transporting and terminating traffic. These financial reports, with which the TRA is fully familiar, provide only aggregate company information that could be potentially applicable to a rate regulation proceeding which this arbitrating [sic] proceeding is not and cannot be.²⁴

b. CMRS PROVIDERS

Referring to Interrogatory No. 37 (in its original form) and to Interrogatory No. 38 the CMRS Providers stated in their *Motion to Compel*

The requested information is clearly relevant to determining transport and termination rates, which are based, in part, on the cost of plant and support assets. Detailed FCC regulations describe how such costs are to be calculated. In general, switching and transmission equipment and cable costs must reflect currently available inventory at current vendor prices and company-specific discounts. Plant capacity must reflect an efficient network configuration. Utilization levels for end office switching (minutes of use per line) and transport (trunks and minutes of use per trunk) must represent efficient sizing of network elements. The amounts of support assets (land, buildings and housing for switches and transport equipment) must be reasonable and must not reflect embedded costs. Maintenance expenses associated with switching, transmission equipment and cable maintenance expenses must not include provisioning costs associated with end-user service connection charges. Other operating expenses also must not reflect embedded or past operating costs, but rather current costs directly attributable to switching and common transport. The requested audited financial statements will contain information related to plant and support asset costs. The requested access cost studies will contain information regarding embedded costs—which are not allowed in forward-looking transport and termination rates. All information requested in Interrogatories 37 & 38 is relevant.²⁵

In the *Joint Statement* the CMRS Providers stated that they “are entitled to receive the requested financial statements, which are relevant to a number of the pending issues in the case, including those relating [sic] the cost basis for the rates in the arbitration. CMRS Providers request that the Hearing Officer grant the pending motion to compel a response to this interrogatory (as modified).”²⁶

In the *CMRS Providers’ Response*, the CMRS Providers stated that many of its members had in fact already received what appeared to be information responsive to Interrogatory No. 37 but noted

²⁴ *TEC Request*, p. 4 (June 28, 2004) (citing 47 USC 252(d)(2)(B)(ii)).

²⁵ *Motion to Compel*, pp. 11-12 (May 13, 2004).

²⁶ *Joint Statement*, p. 12 (June 11, 2004).

that the information was provided upon the condition that it could be used only upon the establishment of an unspecified “higher level of confidentiality than is provided for in the Protective Order.”²⁷

The CMRS Providers addressed the TEC Companies’ objection to producing the requested information on the basis that they are not subject to the FCC’s pricing standards and stated that the issue of whether the TEC Companies are subject to the FCC’s pricing standards is irrelevant to the issue of whether they should produce the requested audited financial statements noting that the applicability of the FCC’s pricing standards to the Coalition members was a properly-raised issue contained in this arbitration proceeding.²⁸ The CMRS Providers asserted that to sustain this objection would amount to requiring them to prevail on the merits of an issue already properly a part of the arbitration prior to obtaining discovery relevant to the issue.²⁹

The CMRS Providers responded to the Coalition’s objections regarding the relevancy of the requested financial statements stating that they are relevant to the issue of the costs of transport and termination. The CMRS Providers stated that

[The requested financial statements] are useful to develop maintenance expense factors for use in a transport and termination TELRIC study . . . in analyzing the levels of common costs and in developing a reasonable forward-looking common cost factor to load common costs on the TELRIC to produce forward-looking economic costs . . . in identifying significant recent additions to switching, cable and wire and circuit equipment plant, the main components of transport and termination . . . in determining an ILEC’s current debt ratio [which is] used in developing a composite cost of money . . . in [computing] an effective income tax rate . . . [and in providing] a good overall sense of the ILEC’s cost structure for comparison with the costing reflected in the forward-looking transport and termination cost study.³⁰

The CMRS Providers stated that these above-identified examples demonstrate that Interrogatory No. 37 is relevant to these proceedings, that the CMRS Providers are entitled to the requested audited financial statements, that the *Order* is well grounded, and that the *TEC Request* and *Coalition*

²⁷ *CMRS Providers’ Response*, p. 3 (July 1, 2004)

²⁸ *Id.* at 5

²⁹ *Id.*

³⁰ *Id.* at 6

Request should be denied³¹

During the July 26 Hearing, Counsel for the CMRS Providers responded to the Coalition's suggestion that if the requested information was required to be produced, it should be made available only to attorneys and expert witnesses by stating that non-expert witnesses and support personnel would need access to the requested information and that the protective order was otherwise sufficient to protect the confidentiality of the requested information³²

IV. DISCUSSION, ANALYSIS AND FINDINGS

The Coalition's statements that the *Order* was entered without an opportunity for hearing and without allowing the seven-day time period to pass in which parties are permitted to respond to preliminary motions³³ should be considered in light of the following facts: 1) the *Motion to Compel* was filed on May 13, 2004; 2) the *Joint Statement* (indicating no objection to Interrogatory No. 37) was filed on June 11, 2004; and 3) the *Order* was not entered until June 17, 2004—more than one month from the date the *Motion to Compel* was filed. While arguably one could conclude that the CMRS Providers renewed their *Motion to Compel* on June 11, 2004 with the filing of the *Joint Statement* and that, per Authority rule, the Coalition's response would have then been due on June 18, 2004 (one day after the *Order* was entered), the Authority finds that the alteration of Interrogatory No. 37 from a request for four years worth of financial data to a request for data for two of the four originally-requested years does not constitute an alteration substantial enough to restart the time provided to reply. The Authority finds that the Coalition was provided with an opportunity to file a response to the *Motion to Compel*.

In the Pre-Arbitration Officer's June 17, 2004 *Order*, the sole reasoning for ordering production of the requested audited financial statements reads, "The Coalition stated that it would confer regarding its response to this request but has offered no objection to providing the requested

³¹ *Id.* at 7.

³² Transcript of Proceedings, pp. 28-30, 40-45 (July 26, 2004)

³³ TRA Rule 1220-1-2-06(2) provides that any party opposing a motion shall file and serve a response to the motion within seven (7) days after service of the motion.

information.”³⁴ This finding does not address the relevancy objection, which is found in the administrative record. Therefore, the Pre-Arbitration Officer erred when she failed to address the issue of relevancy. In order to move this docket forward expeditiously and efficiently, it is appropriate to review the issue of relevancy rather than remand the matter to the Pre-Arbitration Officer.

a. RELEVANCY

TRA Rule 1220-1-2-.11 provides that “where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure ” TRA Rule 1220-1-2-.11(6) provides that “the party responding to any form of discovery shall respond or object to each request.”

Rule 26.02 of the Tennessee Rules of Civil Procedure (“TRCP”) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Price v. Mercury Supply Co., 682 S.W.2d 924 (Tenn. Ct. App. 1984), articulates the broad definition of relevance used by Tennessee courts in constructing TRCP 26.02. In that case, the Court of Appeals cited a United States Supreme Court case constructing the federal counterpart to TRCP 26.02 and holding, “The key phrase in this definition – ‘relevant to the subject matter involved in the pending action’ – has been construed broadly to encompass any matter that bears on, or that reasonably could bear on, any issue that is or may be in the case.”³⁵

³⁴ Order, p 7 (June 17, 2004)

³⁵ *Price v. Mercury Supply Co.*, 682 S W 2d 924, 935 (Tenn Ct App 1984) (citing *Oppenheimer Fund, Inc v Sanders*, 437 U S 340, 98 S Ct 2380, 2389 (1978))

The Coalition's argument that the requested audited financial statements are not relevant because consideration of the information contained in those statements may not be used in traditional rate case proceedings using rate of return regulation and is prohibited by Section 252(d)(2)(B)(ii) of the Telecommunications Act of 1996 is without merit. Section 252(d)(2)(A) requires that terms and conditions for reciprocal compensation: 1) provide for the recovery of costs associated with transport and termination; and 2) determine such costs on the basis of a reasonable approximation of the additional costs. Section 252(d)(2)(B)(i) as interpreted by the Federal Communications Commission in paragraph 1056 of the *First Report and Order* provides that the Authority is not authorized when reviewing reciprocal compensation terms and conditions to engage in a traditional rate case proceeding using rate of return regulation.³⁶ This arbitration is not such a proceeding and the requested information has not been sought to establish particular rates in a traditional rate-making proceeding.

The CMRS Providers have offered five examples of the relevancy of the requested information including: 1) developing maintenance expense factors for use in a transport and termination TELRIC study; 2) analyzing the levels of common costs and in developing a reasonable forward-looking common cost factor to load common costs on the TELRIC study and produce forward-looking economic costs, 3) determining recent additions to switching and outside plant; 4) determining an ILEC's current debt ratio; and 5) providing an overview of an ILEC's cost structure.³⁷

The requested financial statements bear on, or reasonably could bear on, an issue that is or may be in this case, that is, an approximation of the forward-looking economic costs of transport and termination. The requested audited financial statements are therefore relevant to the subject matter involved in this pending arbitration and should be produced by the Coalition as ordered.

³⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, 11 F.C.C.R. 15,499, ¶ 1056 (Aug. 8, 1996)

³⁷ *CMRS Providers' Response*, p. 6 (July 1, 2004)

b. THE PROTECTIVE ORDER

The Coalition's assertion that it had not anticipated providing the requested information when first considering the protective order ultimately entered in this docket is not persuasive. The protective order that was ultimately entered in this docket was in the Coalition's possession, at a minimum, by March 8, 2004. Interrogatory No. 37 (in its original form) was served upon the Coalition on March 19, 2004. The Pre-Arbitration Officer did not enter an order adopting the protective order until April 12, 2004. Review of the language of the protective order demonstrates that the protective order expressly refers to "financial statements" on page one thereof and therefore anticipates the production of financial statements. Therefore, the Coalition was aware of the nature of both the discovery request and the governing protective order well in advance of the entry of the protective order.

The Coalition has not demonstrated that the protective order entered by the Pre-Arbitration Officer is insufficient to address their concerns regarding producing the requested audited financial statements. The Coalition has not demonstrated that the requested information is likely to be misused or that they will suffer harm if the terms of the protective order are followed. The protective order is a document of honor. The CMRS Providers have stated that they will abide by the terms of the protective order. The protective order, as entered, should apply to the requested audited financial statements.

V. CONCLUSION

The Request for Reconsideration of "Order Granting Motion to Compel" Issued June 17, 2004 by the Pre-Arbitration Officer, which is considered here as a request for interlocutory review, should be denied and the *Order Granting Motion to Compel* should be sustained. The Coalition should provide the requested audited financial statements pursuant to the terms of the protective order adopted by the Pre-Arbitration Officer on April 12, 2004.

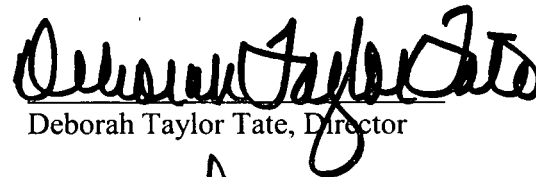
IT IS THEREFORE ORDERED THAT:

1. The *Request for Reconsideration of "Order Granting Motion to Compel" Issued June 17, 2004 by the Pre-Arbitration Officer*, considered here as a request for interlocutory review, is denied.
2. The Coalition shall provide copies of each Coalition member's most recent two audited financial statements containing Part 32—Uniform System of Accounts level detail pursuant to the terms of the protective order adopted by the Pre-Arbitration Officer on April 12, 2004.

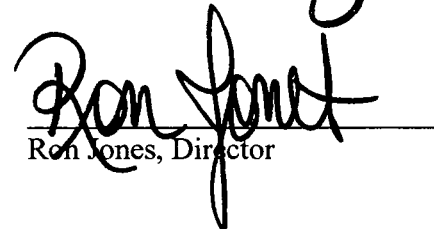
TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS



Pat Miller, Chairman³⁸



Deborah Taylor Tate, Director



Ron Jones, Director

³⁸ Chairman Miller joined the majority in finding that the requested audited financial information is relevant to the subject matter involved in this arbitration and should be produced by the Coalition. Chairman Miller dissented from the majority to the extent that the majority declined to afford additional protection to the requested audited financial statements. Chairman Miller found that all parties to this matter have acknowledged that the requested information is commercially sensitive, that there will be little or no additional burden to the CMRS providers if additional protections are put in place to preserve the confidentiality of this sensitive information, and that there would be significant burden or prejudice to the Coalition should this information inadvertently find its way into the possession of the wrong person or persons. For these reasons, Chairman Miller found that additional protections are appropriate and should be included in the protective order.